

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 12TH JULY 2007 / 21ST ASHADHA 1929

Bail Appl..No. 4233 of 2007()

CRIME NO.292/2007 OF THAMARASSRY POLICE STATION

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PETITIONERS/ACCUSED 1 TO 5

1. JAIS MATHEW, S/O.MATHEW,
AGED 31 YEARS,KALLUKAVUNKAL,
PUTHUPADI AMSOM DESOM,
MYLALLAMPURA,
KOZHIKODE TALUK.
2. BOBBY JOY,
S/O.JOY,AGED 22 YEARS,
THURUTHIL VEEDU,
PUTHUPADI AMSOM DESOM,
MYLALLAMPURA, KOZHIKODE TALUK.
3. KUTTAN @ JOJO MATHEW,
S/O.MATHEW,AGED 29 YEARS,
KALLKAVUNKAL,
PUTHUPADI AMSOM DESOM,
MYLALLAMPURA,KOZHIKODE TALUK.
4. LIBIN MATHEW,
S/O.MATHEW, AGED 20 YEARS, KANDAPATHU,
PUTHUPADI AMSOM DESOM,
MYLALLAMPURA,KOZHIKODE TALUK.
5. ANEESH,
S/O.JOSEPH, AGED 30 YEARS,
THANNIKAKKUZHI,
PUTHUPADI AMSOM DESOM,MYLALLAMPURA,
KOZHIKODE TALUK.

BY ADV. SRI.ALEXANDER GEORGE

RESPONDENTS: COMPLAINANT

1. STATE OF KERALA REPRESENTED BY ITS
DIRECTOR OF PUBLIC PROSECUTION,
HIGH COURT OF KERALA, ERNAKULAM.
2. THE SUB INSPECTOR OF POLICE,
THAMARASSRY POLICE STATION,
KOZHIKODE THALUK.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 12/07/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R.BASANT, J.

B.A.No.4233 of 2007

Dated this the 12th day of July 2007

O R D E R

Application for anticipatory bail. Petitioners are accused 1 to 5. Altogether there are seven accused persons. There are three injured persons, that is the defacto complainant, his wife and son. Crime has been registered inter alia under Section 326 read with 149 I.P.C. Loss of tooth of the defacto complainant brings in the allegation under Section 326 I.P.C. The crux of the allegations is that in furtherance of their prior animosity, the five accused persons went to the house of the defacto complainant and attacked the defacto complainant, his wife and son resulting in injuries to all the three of them. Investigation is in progress. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. They are victims of aggression and not aggressors. In any view of the matter, they do not deserve to suffer the trauma of undeserved arrest and incarceration. In these circumstances, it is prayed that anticipatory bail may be granted to the petitioners.

3. The learned Public Prosecutor opposes the application. All the five accused persons are named in the F.I.R. Sufficient indications pointing to their complicity is available. This is not a fit

case where the extraordinary equitable discretion under Section 438 Cr.P.C can or ought to be invoked in favour of the petitioners. They must resort to the normal and ordinary course of appearing before the investigating officer or the learned Magistrate having jurisdiction. They must thereafter seek regular bail in the ordinary course, submits the learned Public Prosecutor.

4. In the facts and circumstances of this case, I find merit in the opposition by the learned Public Prosecutor. This, according to me, is certainly not a fit case where extraordinary equitable discretion deserves to be invoked. This is a fit case where the petitioners must appear before the learned Magistrate or the investigating officer and seek regular bail in the normal and ordinary course.

5. In the result, this petition is dismissed. Needless to say, if the petitioners surrender before the investigating officer or the learned Magistrate having jurisdiction and apply for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

(R.BASANT, JUDGE)

jsr

// True Copy//

PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007